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2 IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3

4 UNITED STATES OF AMERICA,

5 vs.

Criminal No. 20-116

6 BRIAN JORDAN BARTELS,

7 Defendant.

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10 Transcript of proceedings on January 27, 2021 United States
11 District Court, Pittsburgh, Pennsylvania, before Judge
Arthur J. Schwab.

12

13 APPEARANCES:

14

15 U.S. Courthouse
700 Grant Street
16 Pittsburgh, Pennsylvania

17 For the Defendant: Joseph S. Otte Esquire
429 Fourth Avenue
18 Suite 1002
Pittsburgh, PA 15219

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20 Court Reporter: Marsia L. Balobek
700 Grant Street
Suite 5300
21 Pittsburgh, Pennsylvania

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25 Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E S S I N G O F S P E C I A L I Z E D S P E C I F I C A T I O N S

(Proceedings held by way of hybrid hearing; in-person
and over Zoom videoconferencing)

4 THE COURT: Everyone, you may remain seated; and at
5 least in the back row, you need to socially distance
6 yourselves. Thank you. I appreciate if everyone would mute
7 their devices, please. I'm getting some feedback.

8 Good morning. This is the time and place set for --
9 I'm still getting feedback. In addition to muting yourself,
10 turn your volume down on your device, please.

11 This is the time and place set for hybrid sentencing
12 in criminal number 20-00116. All parties are appearing by
13 videoconference except for the Court -- I'm physically in the
14 courtroom along with the court reporter. Also with us in
15 person are the defendant and defense counsel, at defendant's
16 request, along with two guests. So again, everyone is
17 appearing by Zoom except the Court, court reporter, defendant,
18 defense counsel and two guests, who are all here in person.

19 For the government, who do we have on the
20 videoconference, please?

21 MR. SWEENEY: Shaun Sweeney, assistant U.S. attorney
22 here for the government, Your Honor.

23 THE COURT: Welcome. On behalf of the defendant,
24 please?

25 MR. OTTE: May it please the Court, Joe Otte on

1 behalf of Mr. Bartels.

2 THE COURT: Welcome. And we have some people on the
3 videoconference. We have two reporters, welcome, and one
4 other person. Do you know who the other person is, defense
5 counsel?

6 MR. OTTE: No, Your Honor.

7 THE DEPUTY CLERK: I believe she's also a reporter,
8 Judge.

9 THE COURT: Well, I welcome all three reporters. And
10 if you have any trouble hearing at any time, just call my
11 chambers and we'll help you as much as we can so you can
12 participate and hear what occurs.

13 These proceedings are being transcribed by our court
14 reporter the same as if everyone was physically present in the
15 courtroom. Before proceeding further, I want to make it clear
16 on the record to everyone that recording, whether audio, video
17 or both, photographing, broadcasting or otherwise
18 electronically or digitally capturing the content of any civil
19 or criminal court proceeding remains strictly prohibited; in
20 other words, illegal. Further, I instruct all parties to mute
21 themselves when not speaking, and when they do speak to
22 identify themselves by name each time.

23 I would ask the defendant to raise his right hand to
24 be sworn, please. You may remain seated so we can see you on
25 the camera. Thank you.

1 (BRIAN JORDAN BARTELS was duly sworn)

2 THE COURT: Sir, do you understand that having been
3 sworn, your answers to my questions are subject to the
4 penalties of perjury or for making a false declaration if you
5 do not answer truthfully?

6 THE DEFENDANT: I do. Yes, I do.

7 THE COURT: Okay. I think --

8 MR. OTTE: My apologies, Your Honor.

9 (A discussion was held off the record)

10 THE DEFENDANT: Yes, I do.

11 THE COURT: The Court notes for the record that due
12 to the COVID-19 crisis and the related miscellaneous orders
13 entered by Chief Judge Hornak at 20-MC-00466 on March 30,
14 2020, sentences have been required to occur by
15 videoconference; however, whereas here the defendant does not
16 wish to proceed by videoconference, the Court is permitted to
17 conduct what would be characterized as a hybrid sentencing
18 hearing, which is a combination of in-person and
19 videoconference hearing.

20 On December 4, 2020, the Court ordered the defendant
21 to promptly file a motion to proceed by videoconference, if
22 applicable, or motion to proceed by hybrid as outlined in that
23 order.

24 On December 8, 2020, defendant filed his notice
25 setting forth that he wished to proceed by hybrid

1 videoconference sentencing and thus defendant and his counsel
2 are appearing today in person while following CDC guidelines
3 and all other parties are appearing by video except for the
4 two witnesses or guests that we have in the courtroom.

5 The Court notes for the record that there's no
6 difference substantially or procedurally than if the parties
7 were present in the courtroom totally and appearing in person.

8 Again, to the defendant, do you understand, sir, that
9 having been sworn, your answers to my questions are subject to
10 the penalties of perjury or for making a false declaration if
11 you do not answer truthfully?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Court notes for the record that on
14 December 22, 2020, defendant entered a plea of guilty in this
15 courtroom to Count 1 of a one-count indictment at criminal
16 number 20-00116, charging the defendant with violation of
17 Title 18 United States Code Sections 231(a)(3) and Section 2,
18 obstruction of law enforcement during a civil disorder.

19 Correct, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Following your guilty plea, I directed
22 the probation office to prepare a pre-sentence investigation
23 report, which you have received, correct, counsel?

24 MR. OTTE: Yes, Your Honor.

25 THE COURT: Correct, sir?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I've reviewed the pre-sentence
3 investigation report, addendum thereto and the sentencing
4 recommendation of the probation office. I've also reviewed
5 defendant's and government's objections to paragraph 17 of the
6 pre-sentence investigation report, wherein the probation
7 office determined that the United States Sentencing Guidelines
8 Section 2J1.1 is applicable to defendant's conduct, and thus
9 the base level is a 14.

10 In support of his objection to paragraph 17,
11 defendant asserted that upon application of the United States
12 Sentencing Guidelines Section 2X5.1 to his offense of
13 conviction, Title 18 United States Code Section 231(a)(3):
14 One, both the United States Guidelines Sections 2A2.4 and
15 United States Guidelines Section 2B1.1 are sufficiently
16 analogous to Section 231(a)(3). Two, Section 2J1.2 is not
17 sufficiently analogous to section 231(a)(3). Third, that the
18 most analogous section to 231(a)(3) is Section 2A2.4. And
19 fourth, because both Section 2A2.4 and Section 2B1.1 are
20 sufficiently analogous to Section 231(a)(3), the Court should
21 apply one of those provisions in determining defendant's
22 sentence.

23 Just so it's clear, the issue here is that there's
24 not a guidelines section that perfectly matches the offense to
25 which defendant has pled guilty. So we had to search for the

1 guidelines section, the sentencing guidelines section, that
2 was the closest to the crime to which defendant pled guilty.

3 In support of its objection at paragraph 17, the
4 government contends that utilizing the element-based approach
5 as set forth by the United States Court of Appeals for the
6 Third Circuit in the United States versus Jackson 862 F.3d 325
7 decided in 2017: One, both Section 2A2.4 and 2J1.2 are
8 sufficiently analogous to 231(a)(3); and second, the most
9 analogous section to 231(a)(3) is section 2A2.4.

10 Court eventually entered tentative findings of fact
11 sustaining both the government's objection and the defendant's
12 objection to paragraph 17. Court now adopts its tentative
13 findings as final and sustains the objections, as I previously
14 mentioned.

15 I've reviewed the sentencing memoranda filed by the
16 defendant and government and numerous letters attached to
17 defendant's sentencing memorandum. I compliment both counsel
18 in your diligence in not only working through the applicable
19 guidelines section, but in your memorandums that you filed.
20 It was a very professional job and I thank you for your
21 efforts in that regard.

22 Pursuant to the standing order of the Board of
23 Judges, the Court finds it's not appropriate to disclose the
24 recommendation of the probation office to counsel nor the
25 parties; however, sir, in determining your sentence, the Court

1 will not consider any matter that's not previously been
2 disclosed to you or your attorney.

3 Defense counsel, have you reviewed the pre-sentence
4 investigation report, addendum thereto and discussed them with
5 your client?

6 MR. OTTE: Yes, Your Honor.

7 THE COURT: Are there any errors in the pre-sentence
8 investigation report or addendum that you have not previously
9 called to the Court's attention?

10 MR. OTTE: No, Your Honor.

11 THE COURT: Sir, have you reviewed the pre-sentence
12 investigation report, addendum thereto and other matters and
13 discussed them with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Counsel, is there any legal cause why
16 sentence should not be pronounced?

17 MR. OTTE: No, Your Honor.

18 THE COURT: Anything else you would like to say or
19 defendant would like to say, now is your time. And I think
20 you've also filed a motion for a variance. So the time is
21 yours.

22 MR. OTTE: Yes, Your Honor. I would like to call one
23 witness, Mr. Bartels' father, George Bartels.

24 THE COURT: He has to speak into a device.

25 MR. OTTE: Your Honor, I'll let him speak into the

1 laptop and I can do it potentially at the stand right there.

2 THE COURT: No, he can do it at the corner of
3 counsel's table, so you're a good 20 feet away from the rest
4 of us. Thank you.

5 Sir, you can come forward. You do not need to be
6 sworn. And since you're going to be by yourself, you may take
7 your mask down for this brief period of time so the court
8 reporter can accurately take down what you're saying.

9 MR. GEORGE BARTELS: Yes, sir.

10 THE COURT: You need to push the screen back a little
11 bit on the top, please. Thank you, sir. Okay. Speak loudly,
12 please.

13 MR. GEORGE BARTELS: Test. Can you hear me?

14 THE COURT: Yes, sir.

15 MR. GEORGE BARTELS: Thank you, Your Honor, as anyone
16 can probably imagine, the last six, seven months have been
17 incredibly difficult for our family. Brian brought that on
18 himself; I understand that. This has given me and my wife
19 Chandi, who is also in the courtroom, the opportunity to kind
20 of recommit to Brian and what he needs in his life to be
21 successful, to be a law-abiding citizen, to have a future and
22 display his full potential.

23 I'm sure you probably read a lot of these things
24 already in your sentencing reports and probation reports and
25 those things, but I do want to just mention a little bit of

1 background about Brian, his character and who he truly is.
2 Brian, you know he's had some mental health issues and
3 developmental issues, obsessive compulsive disorder, ADHD, to
4 name a few. Your Honor, my son is not perfect. I'm not up
5 here to waste the Court's time to convince you he is. His
6 actions in late May, whatever that day was, were flat out
7 wrong. Myself, my wife, my family and especially Brian, we
8 don't condone those actions. We understand what he did was
9 wrong and we understand that he needs a chance to redeem
10 himself. Brian does display many positive attributes though.
11 A 30-second video does not encapsulate everything my son has
12 and can bring to his neighborhood, communities. He's very
13 giving, he's very generous, he's kind, he's loving. He helps
14 others. He gives classes to young students. He educates
15 others about animal rights. He has donated his time and
16 resources to needy families. He is, at his heart, a genuinely
17 kind person.

18 I understand what you're tasked with in trying to
19 determine what is the best appropriate sentence for him. And
20 I would like to just make a couple of points about Brian's
21 support system and his future plans. Brian has a fantastic
22 support system. And you know, frankly, if it weren't for the
23 COVID restrictions, we would have packed this courtroom. My
24 wife and I were allowed to be here and we're grateful for that
25 opportunity. But we have grandparents on both sides, aunts

1 and uncles on both sides, his brother, my brother, his
2 counselor, family, friends, others in our network of support
3 that have been with us through these last six, seven months of
4 hell.

5 Brian is on the right track. That rehabilitation has
6 already begun. I can assure you and this Court that myself and
7 my wife are more invested in Brian's future and him following
8 the straight and narrow more than any PO or anyone affiliated
9 with the corrections system.

10 One thing that I think it's important for you to
11 know, Your Honor, my son attends counseling sessions with his
12 therapist Kerrie Boydman. And Ms. Boydman has been
13 instrumental in helping Brian kind of filter through his
14 obsessive thoughts and what he sees are injustices and what
15 are possible in productive outcomes and solutions as opposed
16 to the counterproductive and stupid decision that he made.
17 She's helping him grow, develop and work through things in his
18 weekly counseling sessions, and I truly believe, hand on my
19 heart to God as my witness, this is a huge step in the right
20 direction for him.

21 My son Brian has also been at group recovery sessions
22 and he's been on the receiving end of a lot of great things,
23 ways to cope, ways to deal, to have peer counseling. But one
24 thing that makes me proud as a father is that he has gone a
25 step above and beyond that and now he's giving back to that

1 group. It's a recovery group similar to AA. He helps
2 facilitate some of the sessions. He's been a peer advisor to
3 others, he's been a resource to others, and actually helped
4 others. And I think that's clicked a light bulb for Brian,
5 that he can do positive things and he can help others.

6 I also want you to know, Judge, that Brian has plans
7 for the future. This is not a path that he's going to
8 continue to go down. There's no prior record of this. And in
9 my humble opinion, there's no reason to believe this would
10 ever happen again. He's been accepted to college. He's using
11 that turning point with his recovery to understand that he has
12 the potential to help people, he has the potential to be
13 something more than what he's been seen in these last several
14 months. He's already been accepted to a four-year university.
15 He's going to double major in psychology and political
16 science, to help him better understand the brain, people's
17 reactions and emotions and things that have contributed to a
18 lot of the frustration and discord and chaos that our entire
19 country, not just my son, has seen in this last year. He
20 wants to major in political science to better understand the
21 system, this very, very confusing system. I'm 46 years old.
22 I don't fully understand how we got here, what happened. He
23 wants to educate himself and be able to help others in his
24 future.

25 Judge Schwab, Your Honor, this is a plea for mercy

1 from a father. I love my son very much. I know what he did
2 was wrong. He deserves a second chance. He spent a couple
3 days in jail already, Allegheny County. God blessed his hands
4 for music, playing guitar, writing songs, holding a
5 microphone, for helping others, not to have to defend himself
6 and fight in prison. I implore you to not incarcerate my son.
7 That's not the best course of action.

8 The rehabilitation with my son has already begun. My
9 wife and I have his support system in place. We're going to
10 ensure that he continues to keep his grades, he continues to
11 take his employment seriously and he continues to have an
12 opportunity to redeem himself, to restore our family name and
13 to show you and the whole world -- because this has gone
14 worldwide -- most importantly, himself, what his full
15 potential is. Please give him the opportunity to reach that
16 potential.

17 Again, my wife and I will go above and beyond in
18 ensuring we do everything that Brian becomes a positive,
19 productive member of society and a law-abiding citizen. Thank
20 you for your time and listening to my testimony.

21 THE COURT: Thank you for your statement and both you
22 and your wife being physically present here. We obviously
23 have a lot of defendants who appear before this Court and have
24 no family support. So I thank you for being physically here
25 and declaring publicly your support for him.

1 MR. GEORGE BARTELS: Thank you, Your Honor.

2 THE COURT: Excuse me for one minute.

3 (A discussion was held off the record)

4 THE COURT: You may continue, counsel.

5 MR. OTTE: Thank you, Your Honor.

6 THE COURT: And just so it's clear to me, there's no
7 motion on behalf of neither the government nor the defendant
8 for a variance upward or downward, correct?

9 MR. OTTE: Correct, Your Honor. The request for a
10 variance was made just in case the government -- excuse me, in
11 case the Court were to apply the guidelines that the
12 government had previously suggested.

13 THE COURT: On behalf of the government, there's also
14 no motion for variance upward or downward, correct?

15 MR. SWEENEY: That's correct, Your Honor.

16 THE COURT: Back to you, defense counsel. It's still
17 your time.

18 MR. OTTE: I'll be brief. I do want to point out
19 with regard to acceptance of responsibility, as Your Honor
20 knows, in many cases, acceptance of responsibility comes right
21 before trial. In this case, acceptance of responsibility came
22 on the drive home. On his drive home, when he caught a ride
23 after the protest -- I would like to actually go back even
24 further. After he had caused the damage to the police car,
25 after he had spray painted it and busted in the windows, he

1 saw the crowd getting out of hand, he realized he played a
2 role in that and he got out of there as quickly as possible.
3 He then caught a ride home. On the ride home, he called his
4 parents and informed them he had made a stupid decision.
5 Those were his words. That is an acceptance of responsibility
6 that occurred almost immediately. And within 48 hours, he
7 found himself at the Pittsburgh Police headquarters,
8 explaining to the police what had happened. His acceptance of
9 responsibility was immediate and it was fullsome. So I think
10 we deal with the guidelines in terms of points. We don't
11 oftentimes calculate the level of acceptance of responsibility
12 in reality. His immediate and full acceptance of
13 responsibility saved the government and saved Pittsburgh an
14 extraordinary amount of resources, but it also reflects on who
15 he is and what he's capable of as a young man. With that, I'd
16 like to let him make his statement to the Court.

17 THE COURT: Okay. Sir -- counsel, you want to move
18 six feet away. And sir, you can take down your mask so we can
19 hear you clearly. And if you're going to read from a
20 document, kindly read it slowly, please. Thank you.

21 THE DEFENDANT: Yes, Your Honor. I thank you for the
22 opportunity to speak. I understand why I'm here and that
23 people have been hurt because of me, people lost money because
24 of me. People have been upset, angry, frustrated, scared,
25 made people feel less safe. To know that an apology can't

1 erase that, can't take it back as much as I might like to, but
2 for what it's worth, I am sorry. I made a stupid mistake and
3 a lot of people have had to pay for it. I think back to May,
4 leading up to what happened, I was hopeless, angry,
5 frustrated, I had all these emotions and I went out and I made
6 a problem worse. I wanted to help; instead, I hurt people.
7 Quite frankly, it's embarrassing. It's sad how I handled that
8 and how I alienated people from a cause I believed in and
9 brought violence and fear to my community. I looked at what
10 happened. I looked at that failed attempt and thought what
11 can I do that's better, what can I do that will actually help.

12 So as a direct result of what happened last year, I
13 did change my major from music, music education, to psychology
14 and political science. I don't know exactly what I'm going to
15 do with that degree yet. What I do know is that in June of
16 2019, I went to a rehabilitation center, Gateway, not just to
17 get clean, but to fix some deeper problems within myself, and
18 I'm not perfect. I'm still learning. I'm still trying to do
19 better every day. But the person I was before Gateway was
20 hopeless, depressed, a black hole that was not recognizable
21 from who I was before that. And when I went to Gateway and
22 started working with a personal therapist and working on
23 myself, I found healthier ways to cope with those problems.
24 Those therapists helped me so much. And if I can have the
25 opportunity to go to the school that I was accepted into in

1 the fall and train to be able to do that to someone else, to
2 be able to be that person to somebody who needed it as much as
3 I did, to me, that would be worthwhile. I want to be able to
4 channel my energy towards something productive and helpful and
5 effective. I can't hammer home how sorry I am. I can't think
6 of a single person I shouldn't be apologizing to right now.
7 I'm looking forward to a future where I can channel my drive
8 and passion in a productive, mature, effective, healthy and
9 legal way. Thank you, Your Honor.

10 THE COURT: Thank you for your statement. Anything
11 else, counsel?

12 MR. OTTE: No, Your Honor.

13 MR. SWEENEY: Your Honor, may I -- this is Shaun
14 Sweeney, may I make argument with respect to the 3553(a)
15 factors at some point?

16 THE COURT: Sure. You just have to wait your turn,
17 if you kindly would, please.

18 MR. SWEENEY: I'll do that, Your Honor.

19 THE COURT: Sir, are you satisfied with the
20 representation of your attorney?

21 THE DEFENDANT: Yes, sir, I am, Your Honor.

22 THE COURT: Has he done everything you've asked him
23 to do?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Is there anything he's done you think he

1 should not have done?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: On behalf of the government, what is your
4 position today, please?

5 MR. SWEENEY: Judge, I know that the Court is going
6 to consider the factors under 18 USC Section 3553(a) and both
7 Mr. Bartels, younger and his father, have spoken with respect
8 to one of those factors, that being the history and
9 characteristics of the defendant. But I'd like to talk
10 briefly about the nature and circumstances of the offense
11 under 3553(a), which really is the factor that brings
12 Mr. Bartels to the court today to be sentenced for a federal
13 felony. And I want to emphasize three points from the offense
14 conduct relating to the nature and circumstances of the
15 offense that I think are important here.

16 First of all, the defendant went to the protest
17 obviously prepared to, at a minimum, damage or destroy some
18 property. He showed up with a backpack with spray paint in
19 it. He made that decision before he left his house.

20 Secondly, Your Honor, he didn't just choose random
21 property, a wall or a building or a window to begin his
22 destruction, he specifically targeted a police vehicle, a
23 police SUV that was there with police officers whose job was
24 to provide security and deterrence, to protect the protestors
25 who were there to have their voices heard. They were there to

1 protect and maintain peace and safety for everybody there.

2 But Mr. Bartels chose to attack the police vehicle.

3 And third, Your Honor, he chose to be the instigator
4 for this chaos. He's the one that first went over to the
5 police car, spray painted it, jumped up on the roof, smashed
6 the windshield out. He is the one who really was the one who
7 caused the problems here with the crowd in that area. So that
8 a police officer approximately 50 yards away, who was assigned
9 to that SUV that the crowd was destroying, chose to back
10 off -- wisely chose to back off because the crowd had just
11 descended upon that vehicle and was destroying it. He could
12 no longer do his job. Fortunately, nobody was seriously
13 injured up at that scene. But those three things, Your Honor:
14 He came prepared, he chose a police vehicle and he caused some
15 significant chaos. That's why Mr. Bartels is here being
16 sentenced for a federal felony. And I would just like the
17 Court to consider those three points in imposing sentence here
18 today.

19 THE COURT: Counsel, I just want to confirm that the
20 applicable sentencing guidelines section is 2A2.4, that the
21 offense level is an 8. The criminal history category is a I.
22 And that the resulting advisory guideline range is zero to six
23 months imprisonment, one to three years of supervised release,
24 probation of not less than one year, but no more than five
25 years, a fine of \$2,000 to \$10,000, an agreed-to restitution

1 amount of \$1,000 and a special assessment of \$100.

2 Am I correct in my summary of the applicable
3 guideline range and offense level, criminal history category
4 and sentencing range? On behalf of the defendant?

5 MR. OTTE: Yes, Your Honor.

6 THE COURT: On behalf of the government, please?

7 MR. SWEENEY: Yes, Your Honor.

8 (A discussion was held off the record)

9 THE COURT: I think the fine amount is actually
10 \$2,000 to \$20,000. Do you agree with that correction on
11 behalf of the defendant?

12 MR. OTTE: That does sound correct, Your Honor.

13 THE COURT: On behalf of the government, please?

14 MR. SWEENEY: I think so, Your Honor, yes.

15 THE COURT: And the restitution amount as agreed to
16 is \$1,000? On behalf of the defendant?

17 MR. OTTE: Yes, Your Honor.

18 THE COURT: And on behalf of the government?

19 MR. SWEENEY: We stipulated to that, yes, Your Honor.

20 THE COURT: Thank you for working together on that
21 particular issue.

22 Sir, your sentence is as follows: Pursuant to the
23 Sentencing Reform Act of 1984, it is the judgment of the Court
24 that the defendant be sentenced to a term of imprisonment in
25 addition to whatever time he's already served to one day in

1 the custody of the United States Marshal Service. Thereafter,
2 he shall serve three years in supervised release and he shall
3 reside for a period of 180 days, the first 180 days of his
4 supervised release, in a residential reentry center, probably
5 Renewal, to commence as soon as arrangements can be finalized
6 by the probation officer, and he will be required to observe
7 all the rules of that facility.

8 So as to the one year -- one day in the marshals
9 custody, that term of imprisonment will be served today.
10 Immediately following this proceeding, defendant shall be
11 accompanied by his attorney and shall proceed to the office of
12 the United States Marshal Service where he'll be taken into
13 custody. They are prepared to receive him today. And as I
14 said, the term of imprisonment will be followed as soon as
15 possible for 180 days; in other words, six months, at a
16 residential reentry center as soon as a bed is available,
17 which I believe will be very promptly.

18 It is further ordered that defendant shall pay
19 restitution in the amount of \$1,000. Payment is to be made to
20 the Treasurer of the City of Pittsburgh and shall be mailed to
21 the Office of Controller, City of Pittsburgh, City-County
22 Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.
23 The defendant shall make restitution payments at the rate of
24 not less than 10% of his gross monthly earnings or \$250,
25 whichever is greater. The first payment shall be made within

1 30 days of this judgment.

2 The victim's recovery is limited to the amount of its
3 loss and defendant's liability for restitution ceases if and
4 when the victim receives full restitution. Defendant shall
5 apply all moneys received from income tax refunds, lottery
6 winnings, inheritances, judgments and anticipated or
7 unexpected financial gains to this outstanding Court ordered
8 financial obligation within ten days of receipt thereof unless
9 excused from doing so by order of the Court. Court finds the
10 defendant does not have ability to pay interest, therefore
11 interest is waived.

12 While on supervised release, defendant shall not
13 commit another federal, state or local crime, shall comply
14 with the standard conditions that have been adopted by the
15 this Court and shall comply with the following additional
16 conditions:

17 One, defendant shall reside for a period of 180 days
18 at a residential reentry center -- as I said before, probably
19 Renewal -- to commence as soon as arrangements are finalized
20 by the probation officer, and shall observe all rules of that
21 facility.

22 Two, defendant shall not illegally possess a
23 controlled substance. Supervised release must be revoked for
24 possession of a controlled substance.

25 Three, defendant shall not possess a firearm,

1 ammunition, destructive device or other dangerous weapon.
2 Supervised release must be revoked for possession of a
3 firearm, ammunition, destructive device or other dangerous
4 weapon.

5 Four, defendant shall participate in a program of
6 testing and, if necessary, treatment for substance abuse, said
7 program approved by the probation officer until such time as
8 defendant is released from the program by the probation
9 officer and/or the Court. Further, the defendant shall be
10 required to contribute to the cost of services for any such
11 treatment in an amount to be determined by the probation
12 officer, but not to exceed actual costs. Defendant shall
13 submit to one drug urinalysis within 15 days of being placed
14 on supervision and at least two periodic tests thereafter.

15 Five, defendant shall not purchase, possess, and/or
16 use any substance or device designed to alter in any way or
17 substitute defendant's urine specimen for drug testing. In
18 addition, the defendant shall not purchase, possess and/or use
19 any device designed to be used for the submission of a third
20 party's urine specimen.

21 Six, defendant shall submit his person, property,
22 house, residence, vehicle, papers, business or place of
23 employment to a search conducted by the United States
24 probation officer at a reasonable time, in a reasonable
25 manner, based on a reasonable suspicion of contraband or

1 evidence of a violation of a condition of supervision.

2 Failure to submit to a search may be grounds for revocation.

3 Defendant shall inform any other residents that the premises
4 may be subject to searches pursuant to this condition.

5 Seven, defendant shall participate in a mental health
6 assessment and/or treatment program approved by the probation
7 officer until such time as the defendant is released from the
8 program by the Court and/or the probation officer. Defendant
9 is required to contribute to the cost of services for any such
10 treatment in an amount to be determined by the probation
11 officer. These costs shall not exceed the actual costs. The
12 probation office is authorized to release defendant's
13 pre-sentence investigation report to any treatment provider,
14 if so requested.

15 Eight, defendant shall pay restitution, as I
16 mentioned earlier, that is imposed by this judgment at a rate
17 of not less than 10% of his gross monthly earnings or \$250,
18 whichever is greater. The first payment shall be due within
19 30 days of this judgment.

20 Nine, defendant shall report any change of address
21 within 30 days to the United States Attorney's office while
22 any portion of the restitution remains outstanding.

23 Ten, defendant is prohibited from incurring new
24 credit card charges or opening additional lines of credit
25 without prior written approval of the probation officer.

1 Eleven, defendant shall provide the probation officer
2 with access to any requested financial information.

3 Twelve, defendant shall cooperate in the collection
4 of DNA as directed by the probation officer.

5 Court also imposes a mandatory special assessment of
6 \$100, constituting \$100 special assessment at each count to
7 which defendant has pled guilty, which shall be paid to the
8 Clerk of Court forthwith.

9 Based upon the financial information contained in the
10 pre-sentence investigation report, the Court finds the
11 defendant does not have the ability to pay a fine and
12 therefore waives imposition of any fine.

13 Sir, the reason for your sentence is as follows: The
14 sentence of imprisonment of one day in the custody of the
15 United States Marshal Service, in addition to whatever time
16 you've already served in incarceration, plus three years of
17 supervised release, with the defendant residing in a
18 residential reentry center for a period of 180 days, plus the
19 restitution, is sufficient but not greater than necessary to
20 comply with the goals of sentencing as set forth in Title 18
21 United States Code Section 3553(a)(2), which are to reflect
22 the seriousness of the offense, to promote respect for the law
23 and provide for just punishment, to afford adequate deterrence
24 to criminal conduct, to protect the public from further crimes
25 by this defendant, and to provide the defendant with needed

1 education or vocational training, medical care or other
2 correctional treatment in the most effective manner. The
3 Court has considered all the sentencing factors as set forth
4 in Title 18 United States Code Section 3553(a), including
5 those presented by the government and defense and as set forth
6 in the pre-sentence investigation report and addendum thereto.

7 Furthermore, I considered the following: First, the
8 Court has considered the nature and circumstances of the
9 offense. Defendant pled guilty to obstruction of law
10 enforcement during a civil disorder in violation of Title 18
11 United States Code Sections 231(A) (3) and 2 as a result of
12 this criminal conduct on May 30, 2020.

13 Defendant was a part of a large crowd of protestors
14 milling around the area of Centre Avenue above the PPG Paints
15 Arena in Downtown Pittsburgh near an unoccupied Pittsburgh
16 Police sports utility vehicle when he removed a can of red
17 spray paint from his backpack and sprayed an A on the police
18 vehicle. Defendant then jumped on the hood of the police
19 vehicle, sprayed more paint on the vehicle and stomped on the
20 windshield, breaking it. Several people in the crowd began
21 cheering him and some people joined in, hitting and kicking
22 the police vehicle. Defendant jumped off the hood and
23 attempted to break the passenger's side of the vehicle. The
24 police officer assigned to the SUV was approximately 50 feet
25 away from the vehicle when the destruction occurred. After

1 the destruction began, he deemed it prudent to stand down and
2 abandon the vehicle, rather than attempting to regain control
3 of the vehicle or to make any arrests during the civil
4 disobedience.

5 It's certainly true that thereafter, defendant did
6 admit to the police that he initiated the attack on the
7 vehicle, but defendant's conduct is serious criminal conduct
8 and it was not a mistake, it was a crime. His conduct is
9 further set forth in paragraphs 8 through 13 of the
10 pre-sentence investigation report, which I incorporate by
11 reference.

12 Obviously, the difficulty in a sentence like this is
13 the defendant has no past criminal history, but he did engage
14 in serious criminal conduct. Obviously, sentencing him within
15 the guideline range of zero to six months imprisonment, even
16 if it was a sentence of six months imprisonment, but with
17 COVID-19 and the transportation issues and other logistics
18 relating to a sentence of zero to six months, and in light of
19 the need to have the defendant become a productive citizen as
20 quickly as possible, I've chosen the supervised release
21 provision with 180 days in the Renewal Center, which will keep
22 him in Pittsburgh but also greatly limit his freedom, which is
23 just punishment for his criminal conduct.

24 Second, the Court has considered defendant's
25 criminal, family and social history and his personal

1 characteristics as further outlined in the pre-sentence
2 investigation report at paragraphs 26 through 52, which the
3 Court incorporates by reference as a basis for this sentence.
4 The defendant is approximately 21 years old, has no criminal
5 history, as I've mentioned, is a college student and planning
6 further education as we heard from his father today. He
7 suffers from numerous mental health issues, for which he's
8 currently seeking and receiving professional treatment.
9 Hopefully, there will be a way that that can continue even
10 though he is physically confined to the Renewal Center.
11 Defendant has a history also of substance abuse and he's
12 receiving professional help in that regard. I do thank anyone
13 who -- and the various people who wrote letters on his behalf.
14 He's fortunate to have a strong family and friend network to
15 support him.

16 Third, the Court has considered the kinds of
17 sentences available for this offense and the sentencing
18 guideline range under the advisory guidelines and applicable
19 policy statements adopted by this Court -- adopted by the
20 Sentencing Commission.

21 And fourth and finally, the Court has considered the
22 need to avoid unwarranted sentencing disparities among
23 defendants who have been found guilty -- with similar records
24 who have been found guilty of similar conduct.

25 On behalf of the government, does my statement of

1 reasons adequately address all objections, concerns and issues
2 raised?

3 MR. SWEENEY: Yes, Your Honor.

4 THE COURT: Are there any other sentencing factors
5 under Section 3553(a) that the Court has failed to address?

6 MR. SWEENEY: No, Your Honor.

7 THE COURT: On behalf of the defendant, does my
8 statement of reasons adequately all objections, concerns and
9 issues raised?

10 MR. OTTE: Yes, Your Honor.

11 THE COURT: Are there any other sentencing factors
12 under Section 3553(a) that the Court has failed to address?

13 MR. OTTE: No, Your Honor.

14 THE COURT: Have you talked to your client about his
15 right to appeal?

16 MR. OTTE: Yes, Your Honor.

17 THE COURT: Sir, I'm going to review your right to
18 appeal. Except as otherwise waived in the plea agreement, you
19 have the right to appeal from the orders of this Court, the
20 judgment of guilty and/or from the sentence imposed. You have
21 a right to have an attorney represent you on appeal at no cost
22 to you. If you cannot afford them, certified copies of the
23 necessary records and transcripts will be furnished at the
24 expense of the United States government. If you appeal, the
25 notice of appeal must be filed within 14 days of today;

1 otherwise, you will lose your right to appeal. If you
2 request, the Clerk of Court will immediately prepare and file
3 a notice of appeal on your behalf.

4 Sir, do you wish to appeal from the orders of Court,
5 judgment of guilty and/or from the sentence imposed?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you understand that if you change your
8 mind and decide to appeal, any notice of appeal must be filed
9 within 14 days of today, otherwise you will lose your right to
10 appeal?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And if you request -- if you decide to
13 appeal because you've changed your mind, you'll have your
14 current counsel file any notice of appeal, correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: So it's clear, counsel, you're now
17 obligated to take the defendant down to the United States
18 Marshals; and then thereafter to coordinate with the probation
19 officer the arrangements relating to defendant's confinement
20 at Renewal.

21 So on behalf of the probation officer, since we have
22 everybody on the phone at one time or on the video, do you
23 want to explain some logistics that would help in the
24 coordination with defense counsel and defendant, please.

25 PROBATION OFFICER: Absolutely, Your Honor.

1 THE COURT: State your name, please.

2 PROBATION OFFICER: Tracy DeMartino, supervising
3 probation officer.

4 THE COURT: Welcome. Thank you for your work.

5 PROBATION OFFICER: Thank you. As long as Brian's
6 contact phone number is accurate -- if he can verify that the
7 phone number is accurate.

8 THE COURT: Well, why don't we -- why don't you just
9 state the last four digits of the phone number.

10 PROBATION OFFICER: 9506.

11 THE DEFENDANT: That's correct.

12 PROBATION OFFICER: Okay. As soon as you're released
13 from incarceration, an officer will be contacting you tomorrow
14 in order to set up some information with regards to when you
15 would be placed at Renewal and any information with respect to
16 reporting prior to being placed at Renewal.

17 THE COURT: Understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And just so it's clear, the goal of this
20 was to provide punishment for your wrongdoing, but to have it
21 occur immediately or as soon as possible as opposed to having
22 to wait for an uncertain period of time to serve your sentence
23 at some federal institution. But the three years supervised
24 release needs to be followed exactly and precisely and your
25 counsel will explain to you the consequences of violating the

1 terms of your supervised release.

2 On behalf of the government, anything else, sir?

3 MR. SWEENEY: No, thank you, Your Honor.

4 THE COURT: Anything else on behalf of the defendant?

5 MR. OTTE: No, Your Honor.

6 THE COURT: I want to thank defendant's parents for
7 being here and for supporting him. As I said earlier, most
8 defendants appear, have no family and no support system, so
9 I'm encouraged by your willingness to stand by your son and to
10 speak on his behalf today. I wish everybody well. Stay safe.
11 I adjourn this hearing.

12 C E R T I F I C A T E

13 I, MARSHALL BALOBECK, certify that the foregoing
14 is a correct transcript from the record of proceedings in the
above-entitled case.

15

16 \s\ Marsia L. Balobek
17 MARSHALL BALOBECK
Official Court Reporter

06/02/2021
Date of Certification

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